BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

FLOY G. ROBERTSON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-408
Case No. 78-3319

S.S.A. No.

PORTERVILLE STATE HOSPITAL
(Employer)

Office of Appeals No. F-6855

The employer appealed from the decision of the administrative law judge which held that the claimant was not disqualified from receiving unemployment insurance benefits under section 1256 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant was employed as a registered psychiatric technician for an eight-year period ending on December 1, 1977, at a salary of $1,080 per month.

The claimant was discharged from her position for alleged patient abuse. On November 18, 1977, a patient who was mentally retarded and confined to a wheelchair knocked a glass of juice onto the claimant. The claimant became extremely upset and pushed the patient's wheelchair away where it bumped into another resident's wheelchair. No injuries were caused. There is a conflict in the evidence as to whether or not the claimant struck the patient.

At the time of the incident which caused her discharge, the claimant had been under great mental stress due to family illness. The claimant had slept very little the night before the incident and was extremely tense.

The claimant's work record over an eight-year period has been satisfactory, and her only other counseling was for failure to assure that other employees performed their work in a satisfactory manner.

The claimant, following her termination from work, was afforded a hearing before the State Personnel Board where she was personally represented by a lawyer, and where evidence was presented by witnesses regarding the incident leading to the claimant's dismissal.

As a result of that hearing the State Personnel Board found as a fact that, among other items, the claimant struck the 16-year-old patient, shouted at him, and shoved his wheelchair (with the patient in it) approximately eight feet into another wheelchair. The Board also made conclusions of law based on the preceding facts; these conclusions are not, however, necessary to our disposition of this case.

At the unemployment insurance hearing before the administrative law judge, the employer was present and submitted its evidence by way of a certified copy of the findings of fact, conclusions of law, and decision of the State Personnel Board which had been rendered prior to the hearing in this case and which had become final. However, the claimant denied at the unemployment insurance hearing that she had struck the patient. She did admit that she had shoved his wheelchair and had become upset with him. No witnesses other than the employer representative and the claimant testified before the administrative law judge.

REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides that an individual is disqualified for benefits if he has been discharged for misconduct connected with his most recent work.

In Appeals Board Decision No. P-B-3, the Appeals Board, based on Maywood Glass Company v. Stewart (1959), 170 Cal. App. 2d 719, stated that "misconduct connected with the work" consists of four elements: (1) a material duty owed by the claimant to the employer under the contract of employment; (2) a substantial breach of that duty; (3) a breach which is a wilful or wanton disregard of

that duty; and (4) evinces a "disregard of the employer's interests," i.e., tends to injure the employer.

On the other hand, mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not "misconduct."

In Maywood, the court held that the employer has the burden of establishing misconduct to protect its reserve account.

The employer contends that the principle of collateral estoppel should be applied to this case insofar as the facts regarding the claimant's behavior were conclusively determined in the preceding administrative hearing before the Personnel Board. Consequently, it is asserted that the claimant is estopped from refuting the finding that she actually struck the patient.

Recognized in law is the doctrine of res judicata, a legal concept that is used as a mechanism for settling disputes. It has two aspects, only one of which is applied in any given controvery.

> "First, in a new action on the same cause of action, a prior judgment for the defendant is a complete bar . . ., and a prior judgment for the plaintiff likewise precludes the new action because it results in a merger, superseding his claim by a right of action on the judgment . . . .
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> "Second, in a new action on a different cause of action, the former judgment is not a complete merger or bar, but is effective as a collateral estoppel, i.e., it is conclusive on issues actually litigated between the parties in the former action." 4 Witkin, California Procedure, 2d ed., Judgment, section 148, p. 3293.

It is an abbreviated form of the second aspect of the doctrine of res judicata, collateral estoppel, which

the employer seeks to invoke and which is the issue before us in this case. It is important to note that collateral estoppel applies to both issues of fact and issues of law determined in the prior action. Since the law defining "misconduct," "good cause," and innumerable other concepts in unemployment insurance law differs from the law defining concepts within the purview of the State Personnel Board or any other administrative body, any discussion of the application of collateral estoppel to cases before the Unemployment Insurance Appeals Board must necessarily be limited to issues of fact only.

In order for the doctrine to be invoked in the judicial forum, it ". . . must conform to the mandate of due process of law that no person be deprived of personal or property rights by a judgment without notice and an opportunity to be heard." (Bernhard v. Bank of America, 1942, 192 Cal. 2d 807, 811) Furthermore, affirmative answers to three questions must be given to validate a plea of collateral estoppel. Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits in the prior action? Was the party against whom the doctrine is applied a party to the prior adjudication or in privity with such party?

Although affirmative answers to the above questions may be, and have been, given in many cases, thereby qualifying the case for application of the doctrine, there still continues to be considerable disagreement as to whether the principle of collateral estoppel applies in administrative hearings as well as in the judicial forum. The policy behind the two aspects of res judicata is that of limiting litigation by preventing a party who has had one fair trial from again drawing the issue into controversy (Bernhard, supra). There has been some cautionary language in the cases and the literature to the effect that the principle should not be adopted in its entirety in the administrative law forum. In Bank of America v. City of Long Beach, 50 Cal. App. 3d 882, 890, the court stated that the "Principles of res judicata or collateral estoppel should not be applied indiscriminately to decisions of administrative agencies." That court then went on to quote Professor Davis to the effect that the application of the doctrine of res judicata does have its place in administrative law under certain circumstances, which the court did not clearly define.

> "The key to a sound solution of problems of res judicata in administrative law is recognition that the traditional principle of res judicata as developed in the judicial system should be fully applicable to some administrative action, that the principle should not be applicable to other administrative action, and that much administrative action should be subject to a qualified or relaxed set of rules concerning res judicata." Id. at 890.

It appears, then, that a great deal of the difficulty encountered by the courts in determining whether or not collateral estoppel should be invoked centers around conclusions of law reached in the prior proceeding, and not the findings of fact. Louis Stores, Inc. v. Department of Alcoholic Beverage Control (1962), 57 Cal. 2d 757; Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control (1961), 55 Cal. 2d 728; United States v. Stone & Downer Co., 274 U.S. 225; Restatement of Judgments, section 70, comment f. This observation is corroborated by the statement that the doctrine of res judicata as applied to administrative determinations is weaker as to questions of law than to questions of fact and that its application should be qualified or relaxed to whatever extent is desirable for making it a proper and useful tool for administrative justice (2 Davis, Administrative Law Treatise (1958), 558-559).

It is clear that the State Personnel Board is a constitutional body (California Constitution, Article 7, section 3) and a "court" within the meaning of Code of Civil Procedure section 1908, as are the Workers' Compensation Appeals Board (Cal. Const., Article 14, Section 4) and the Public Utilities Commission (Cal. Const., Article 12). As such they are entitled to make final findings of fact which are binding on a reviewing court if there is substantial evidence to support those findings (Fiske v. State Personnel Board (1957), 147 Cal. App. 2d 631; Boren v. State Personnel Board (1951), 37 Cal. App. 2d 634). Does it follow that findings of fact rendered by one administrative body are entitled to collateral estoppel effect in subsequent proceedings between the same parties before a different administrative body?

This question was addressed in French v. Rishell (1953), 40 Cal. 2d 477 where the Industrial Accident

Commission had determined that plaintiff's deceased husband had died as the result of an injury occurring during the course of and arising out of his employment. The employer/defendant did not appeal the decision and it became final. The plaintiff then made application to the employer city pension board for payment of a pension based on the premise that the plaintiff's husband died as a result of injuries incurred while in performance of his duty as a fireman. Such a payment was provided for by the pension plan under which the deceased husband had been covered. The application was denied. Thereafter the plaintiff brought suit to compel the employer/defendant to pay her a pension and introduced in evidence the Industrial Accident Commission award. The employer/defendant argued that such a finding was not res judicata and denied that the plaintiff's husband died from work-connected injury.

The court held that the findings of the Industrial Accident Commission were entitled to res judicata effect ". . . where the identical issue was decided in a prior case by a final judgment on the merits and the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication." Id., p. 479. It was also pointed out that the Industrial Accident Commission exercised adjudicatory functions and possessed the power to make final determinations on questions of fact.

We believe to be particularly applicable in this case the adoption by the French court of the following language appearing in 2 Freeman on Judgments (5th Ed.) section 641, pp. 1349-1350:

> "In order that an adjudication in one court or tribunal should be regarded as res judicata upon the matters there determined when they come again in question in another tribunal, it is obviously not necessary that the same rules of law, practice or evidence should prevail in both tribunals. The attempt to impose any such limitation would defeat the whole purpose of the rule. . . . All that is essential therefore is that a party should have been given one opportunity for the judicial determination of an issue by a tribunal having the requisite authority and proceeding in a manner recognized as due process of law."

It appears, then, that the rule in the French case would likewise apply to the instant case, i.e., that the findings of fact made by the State Personnel Board are entitled to collateral estoppel effect in an Unemployment Insurance Appeals Board hearing.

It has also been argued that giving inter-agency recognition to collateral estoppel is, in effect, permitting one administrative agency to usurp the duties, responsibilities and powers of the other agency. This argument was answered aptly by the French court when it stated that the other agency involved, which, in this case would be the Unemployment Insurance Appeals Board, ". . . is deprived of no power in such a case except the power to make an independent finding on an issue of fact previously determined by another tribunal. This limitation is, of course, inherent in the doctrine and is a necessary result in every case in which it is applied." Id at 481. The other administrative agency, however, must still apply the pertinent law to the facts found by the adjudicating body.

Having reviewed the cases and authorities in which the application of collateral estoppel has been examined, we conclude that the doctrine is applicable in Unemployment Insurance Appeals Board hearings as to findings of fact determined by other administrative bodies under well defined circumstances. In addition to the requirements inherent in the definition of collateral estoppel, application of this limited aspect of the doctrine shall be applicable in unemployment insurance hearings only when the prior decision was rendered by an administrative agency which has the constitutional or statutory authority to perform an adjudicatory function; only when that decision has become final before the time of the unemployment insurance hearing; and, notwithstanding the existence of the above requirements, only when application of the doctrine would not work an injustice upon the party against whom the doctrine is invoked.

Inherent in a finding of an absence of injustice would be a determination that the parties received due notice of the prior hearing, that adequate opportunity was given the parties to present their case in a comprehensive manner, that the opportunity to be represented by counsel was afforded, and that each party was permitted to present and examine witnesses.

The particular circumstances of the case now before us on appeal conform to the requirements we have formulated above for the application of collateral estoppel. Consequently, it is found that the claimant is estopped from alleging that the facts were other than those found by the State Personnel Board. It remains to be determined, however, whether the facts judicially noticed constitute misconduct as a matter of unemployment insurance law. (Maywood Glass Co. v. Stewart (1959), 170 Cal. App. 2d 719)

There can be little doubt that the claimant's actions toward the 16-year-old patient involved a substantial violation of a material duty owed to the employer, were wilful, and were in disregard of the employer's interests. It may be argued that there were extenuating circumstances in the nature of domestic problems in the claimant's household. However, we have long recognized that certain employees are to be held to a higher duty or standard of conduct, especially when the claimant has been entrusted with special responsibility and has received special training. (Davis v. California Unemployment Insurance Appeals Board (1974), 43 Cal. App. 3d 71, 117 Cal. Rptr. 463) In Appeals Board Decision No. P-B-195 we stated that the standard or test by which conduct is evaluated ". . . will vary with the degree of responsibility or skill which the employee is engaged to exercise." In the instant case the claimant was under a more stringent duty to conduct herself in a manner not inimical to the physical and mental well-being of her employer's charges. It must be recognized that the patient was totally and absolutely dependent on the claimant for his rudimentary human needs. The claimant was not unaware of this, having been employed as a psychiatric technician for a considerable period of time. It is thus concluded that her actions clearly constituted misconduct within the meaning of section 1256 of the code.

DECISION

The decision of the administrative law judge is reversed. The claimant is disqualified from receiving unemployment insurance benefits under section 1256 of the code.

Sacramento, California, October 30, 1979.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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